IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

MFA.No. 1064 of 2002(B)

OP.349/1999 of FAMILY COURT, KOTTAYAM AT ETTUMANOOR
.....

APPELLANTS/RESPONDENTS:

1. AJITH KUMAR, AGED 35, S/O. GOPINATHAN,
SRAYASH HOUSE, I.T.R. ROAD,
VELLOORKUNNAM KARA AND VILLAGE,
MUVATTUPUZHA TALUK.

2. GOPINATHAN, AGED 63, DO. DO.

3. SREEDEVI, AGED 56, DO. DO.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENT/PETITIONER:

USHA, AGED 28 YEARS, D/O. CHANDRASEKHARAN NAIR,
KONDATTUMADATHIL HOUSE, RAMAPURAM KARA
AND VILLAGE, MENACHIL TALUK.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURTON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.6529/2001 IN MFA 1064/2002

DISMISSED

5.7.2007 **SD/-J.B.KOSHY, JUDGE**
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 1064 of 2002

JUDGMENT

Balachandran, J.

The respondents in O.P.No.349/99 on the file of the Family Court, Kottayam are the appellants. The respondent herein is the petitioner in the OP.

2. The respondent filed the original petition aforesaid for a decree for return of money and gold ornaments belonging to her and appropriated by the appellants, inter alia, on the allegation that an amount of Rs.50,000/- was entrusted by her father with appellants 2 and 3 in trust for her benefit and enjoyment on the date of her engagement with the first appellant on 7.1.1996 and the ornaments scheduled in the original petition, weighing 25 sovereigns, had been given to her by her father as gift to be worn at the time of the marriage; that after the marriage, she resided with the first appellant at his family house till 30.12.1996; that

during the period from 4.2.1996 to 30.12.1996, she had to suffer ill treatment, humiliation and harassment at the hands of the appellants and Rekha, the sister of the first appellant and her husband Ravikumar; that at the instigation of the third appellant and the said Rekha and Ravikumar the first appellant took away her gold ornaments on 28.12.1996 under the pretext that the weight thereof is to be ascertained and finally, she was sent out of the house along with her parents, who were got down for mediation talks on 30.12.1996 and that the appellants have appropriated for themselves the gold ornaments of 25 sovereigns belonging to her and the amount of Rs.50,000/- entrusted with appellants 2 and 3 for her benefit and enjoyment.

3. Appellants 2 and 3 did not file any written statement and remained absent and ex parte in the court below. The first appellant resisted the suit denying receipt by appellants 2 and 3 of

Rs.50,000/- on the date of engagement and pleading ignorance of the weight of the ornaments worn on the body of the respondents at the time of marriage and however, contending that the respondent herself had taken the ornaments with her while leaving his house on 30.12.1996. He also denied the allegation of ill treatment of the respondent at his house.

4. After trial and considering the evidence of PWs 1 to 4, RWs 1 and 2 and documentary evidence Exhibits A1 to A5, the court below decreed the claim of the respondent and directed return of Rs.50,000/- and gold ornaments of 25 sovereigns in one month and on failure, allowing the respondent to realise the said amount of Rs.50,000/- and a further amount of Rupees one lakh towards the value of gold ornaments of 25 sovereigns with interest at 18% from the date of decree only.

5. It is contended before us by the learned counsel for the appellants that the Family Court has decreed the claim of the respondent without

sufficient evidence to prove her claim and that therefore, the decree passed by the Family Court has to be set aside.

6. At the outset, we observe that in matrimonial cases, there can only be feeble evidence to establish such claims and there cannot be any authentic record to furnish clinching evidence, as transactions are done in trust and records in evidence are not insisted nor can it be so insisted and obtained.

7. The respondent, as PW1, has deposed all particulars of the gold ornaments given to her at the time of marriage and the amount of Rs.50,000/- having been entrusted with appellants 2 and 3 in trust on the date of engagement on 7.1.1996 in the presence of the President and Secretary of the N.S.S.Karayogam. According to her, thirty cents of land belonging to her mother was sold for Rs.1½ lakhs and an amount of Rs.80,000/- was deposited in her account and the amount of Rs.50,000/- paid on

7.1.1996 was from out of Rs.54,000/- withdrawn from that account on 6.1.1996. Entries in Exhibit A3 pass book evidence the deposit of Rs.80,000/- in the account of the respondent on 4.1.1996 and of withdrawal of Rs.54,000/- on 6.1.1996. The evidence of PW1 stands further corroborated by the testimony of PWs 2 and 3, who are respectively the President and Secretary of the Ramapuram N.S.S. Karayogam, who have witnessed the delivery of Rs.50,000/- by the father of the respondent to the second appellant/father of the first appellant. The second appellant and his wife, the third appellant, who also was stated to be present at the time of delivery of cash, remained absent and ex parte in the court below and have not raised any contest to the claim advanced. The first appellant has also not resorted to examine appellants 2 and 3 to substantiate his contentions. In the circumstances, the finding of the court below that the case of the respondent that Rs.50,000/- was paid to the second

appellant/father of the first appellant on the date of engagement is true cannot be found fault with.

8. PW1 has further given evidence that the ornaments given to her by her parents at the time of marriage were of 25 sovereigns. The evidence of PWs 2 and 3 also supports her version regarding wearing by her of ornaments weighing 25 sovereigns at the time of marriage. The first appellant as RW1 has also not denied the weight of the gold ornaments, though he pleaded ignorance. All the same, he also admits that the ornaments were being worn by the respondent at the time of marriage. PW4 is the Proprietor of Nellikkatheruvil Jewellery at Ramapuram. He has proved Exhibit A4 issued by him noting therein the details of the ornaments made and delivered to the respondent in exchange of old gold. Despite cross-examination, nothing could be brought out to discredit his testimony, except that he has not issued sale bill and levied sales tax on the sale. Courts cannot, but take judicial

notice of such sales taking place without bill. Non issue of bill for the sale under Exhibit A4 and non levy of tax on the sale, though contrary to sales tax laws, is prevailing in our country and the evidence of PW4 cannot be disbelieved on that score. Thus, the finding of the court below on the basis of the available evidence that gold ornaments weighing 25 sovereigns were given to the respondent by her parents at the time of her marriage with the first appellant cannot be faulted.

9. PW1 has also given evidence that cruelty was being meted out to her by the appellants and the sister and brother-in-law of the first appellant advancing demand for more dowry and that in the evening of 28.12.1996, the first appellant, at the instance of others, got all her gold ornaments, including the gold chain worn on her neck by the first appellant, under the pretext that those are to be got weighed to ascertain their weight and that on 30.12.1996 when she was being

sent out along with her parents, who were got down to have discussions, the ornaments had not been given to her. To prove such instances that take place within the matrimonial house of the respondent, no one could naturally, expect any evidence to be there to corroborate her testimony. Mere denial by the first appellant, who gave evidence as RW1, is not sufficient to disbelieve the case of the respondent.

10. RW1 has deposed that while the respondent was going to her house along with her parents, his parents and neighbours were also present; that the almirah kept in his room was used by the respondent to keep her valuables; that the key thereof was with the respondent and he had not made any enquiry at all with respect to the key and that, however, the respondent had kept her gold chains, bangles, rings, etc. in the almirah. At the same time, he had stated that the respondent had taken with her two bags and the gold ornaments were all packed

therein. Obviously, he was not there at the time of the respondent taking her articles in the bag and it is not stated by him as to how he came to know that the ornaments were packed and taken by the respondent. He has further stated that receipts were not obtained from the respondent, as he was having hope that she would return. This, by implication, suggests that he would have obtained receipts otherwise. At another portion of his deposition, he has stated that the respondent was wearing all the ornaments and has taken two large bags also with her when she left. However, no such contention had been raised in the objection and when asked about that, his response was an eloquent silence. It is strange also for a woman to wear all her gold ornaments worn at the time of marriage when she proceeds back to her parental house along with her parents, the life in her matrimonial home having become miserable. He has also further deposed that he was not there at the time of

engagement and therefore, he does not know as to what all transpired at the house of the respondent on the date of engagement. The evidence of RW2 also shows that the respondent had told her that she would return when the first appellant comes over to take her back. If at all it was so, there was no reason for the respondent to insist for return of her gold ornaments before leaving her matrimonial home. However, the circumstances are telling that the respondent could not have taken all the gold ornaments with her when she was sent to her parental house along with her parents, who were got down for discussions when the respondent was finding life miserable due to the ill treatment at her matrimonial home.

11. The further contention advanced on behalf of the appellants is that Exhibit A2 sale deed shows that on 4.1.1996, the property of the mother of the respondent was being sold for a paltry amount of Rs.10,000/- and not for Rs.1½ lakhs, as

alleged by the respondent. The contention is so advanced to highlight the contention of the first appellant that there was no chance of Rs.50,000/- having been paid on the date of engagement and ornaments of 25 sovereigns having been given to the respondent by her parents. Even the first appellant has admitted as RW1 in his evidence that disclosure or otherwise of the sale consideration in full in the sale deed depends on the desire and demand of the purchaser. However, the fact remains that Rs.80,000/- was deposited in the account of the respondent on 4.1.1996 itself as evidenced by the entries in Exhibit A3 passbook. If at all Exhibit A2 sale was only for RS.10,000/-, it suggests only that the parents of the respondent were very affluent otherwise so as to deposit an amount of Rs.80,000/- in the account of the respondent on 4.1.1996.

In view of the discussions made above, we are of the considered view that all contentions raised

by the first appellant resisting the claim was with a view to avoid return of the amount and gold ornaments to the respondent and that his contentions are not true to facts, as rightly held by the Family Court Judge. This appeal, in the circumstances, is devoid of merit and is, hence, dismissed with costs.

(J.B.Koshy, Judge)

5th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.1064 of 2002

JUDGMENT

5th July, 2007